

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1979 OF 2006

M/s. MIRC Electronics Ltd.

..Petitioner.

Vs.

Dattaraj C. Naik & Ors.

..Respondents.

...

Mrs. N.R. Patankar for the Petitioner.

Mr. K.S. Bapat for the Respondents.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

7th August, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. An order of dismissal was passed against the First Respondent by the Petitioner without holding a disciplinary enquiry, the employer having come to the conclusion that it was not practicable to hold a disciplinary enquiry. The Petitioner reserved its right to lead evidence in support of the allegation of misconduct against the First Respondent in the event that the dismissal came to be challenged in a Court of law. The First Respondent instituted

a complaint of unfair labour practices under items 1 (a), (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court at the interim stage passed an order of reinstatement which was confirmed in revision by the Industrial Court. That has led to the institution of these proceedings.

3. The Petitioner was engaged in the production of television sets and has a factory at Wada. At the material time there were several service centers at Mumbai. A decision was taken by the management to hold celebrations for observing "an Onida day" separately for the establishments at Wada and Mumbai. This was objected to by the union which addressed a letter on 12th May, 2003 opposing the decision of the management. On 22nd May, 2003 there was a further letter recording that the union had taken a serious note of the decision of the management to hold separate functions for the establishments at Wada and Mumbai and that appropriate action would be taken if a joint celebration was not held.

4. An order of dismissal was issued on 30th May, 2003 to

three workmen viz. The First Respondent and two others by the name of Rajesh Joishar and Shivswami Verma. The gravamen of the allegation is that on 23rd May, 2003 the First Respondent led a group of 30 workmen and forcibly rushed into the cabin of the Vice President of the management in charge of Human Resources Management in the establishment of the company at Mahakali Caves Road, Andheri. The Vice President was not immediately available and it has been alleged that upon his appearing on the scene, the proceeding took an unruly turn. There was an exchange of words and the group of workmen administered threats of serious physical harm unless the decision of the management was rescinded. On 26th May, 2003 it was alleged that a Japanese delegation has visited the head office of the company when the First Respondent together with about 25 technicians and 25 outsiders forcibly entered into the premises of the establishment and once again threatened the Vice President of serious physical harm. The management, it is alleged, had to call upon the police to protect the personnel and the property of the company. The First Respondent is alleged to have proceeded to the conference room where the Japanese delegation was being addressed and in the course of the meeting slogans derogatory to the management

were stated to have been uttered. On 28th May, 2003 which was the actual date on which celebrations were held at the Wada factory, the First Respondent together with 120 other persons was alleged to have arrived at the factory in two buses and another vehicle and to have obstructed entry of any personnel and vehicles into the factory. The order of dismissal adverts to the derogatory language which was used in the course of the incident on 28th May, 2003, where the factory premises were located with a view to disrupt the function. The police are alleged to have stepped in to prevent a law and order problem. In so far as the First Respondent is concerned, it was alleged that he had specifically expressed the threat that he would like to see who would be willing to give evidence against him in an enquiry and in the event that a charge sheet is issued. It was urged that the acts of misconduct alleged against the First Respondent amounted to riotous and disorderly behaviour on the premises of the establishment within the meaning of Standing Order 24(K) and the commission of an act subversive of discipline or good behaviour on the premises of the establishment within the meaning of the Standing Order 24(I). The management stated that considering the seriousness of the threats that have been given to its personnel and to witnesses, it

was of the opinion that a regular enquiry could not be conducted in a congenial atmosphere and that there were threats to the life of the witnesses who were to be examined. It is in these circumstances that a decision was taken to dispense with the enquiry. The management, however, reserved its right to lead evidence in support of the charge of misconduct in the event that the dismissal was challenged in a Court of law.

5. Respondent No.1 instituted a complaint of unfair labour practices. An application for interim relief was moved before the Labour Court which was allowed. The Labour Court has perused the antecedent facts and circumstances including the allegation of the management that the First Respondent was part of a disorderly mob of workmen who had attempted to disrupt the function held to celebrate what is termed as 'Onida Day'. The Labour Court held that the meeting which took place on 24th and 25th May, 2003 was not a meeting of only two or three persons, but a large group of workmen was present. The Labour Court at the prima facie stage was satisfied that "something might have happened on 23rd , 26th & 28th May, 2003 but what was the nature of the incident is not clear". This finding of the Labour Court would

therefore clearly indicate that at the present stage, it is premature to make any observations in regard to the nature of the incident which took place until evidence came to be recorded before the Court. Despite this, the Labour Court interfered with the order of dismissal at the interim stage and directed reinstatement. The finding of the Labour Court that there is no complaint to the police at all is plainly erroneous because it would appear that on 26th May, 2003 the management had addressed a letter to the Senior Inspector of Police at Wada Police Station recording that it was apprehending that the function in which over 1000 employees together with their families were expected to participate was likely to be disrupted. The Labour Court was of the view that it was not mentioned by the management as to what action had been taken against the other employees and it appeared that action was taken only against three persons including the First Respondent herein. As a matter of fact, this finding is incorrect, since it has been fairly accepted by both the learned counsel appearing before this Court that charge sheets were issued to four other employees against whom departmental enquiries were initiated and those employees came to be dismissed from service in 2006. The charge sheets have been issued some time in September 2003 or thereabout.

Counsel appearing for the management has also stated before the Court on instructions that seven other employees were in fact suspended but, the disciplinary procedure against them was not followed to its logical conclusion since the establishment at Mumbai where they were employed had since been closed. Be that as it may, there is merit in the submission which has been urged on behalf of the management that the Labour Court has transgressed the limits of its jurisdiction by interfering with the order of dismissal at the interlocutory stage. Undoubtedly, the management has chosen to dispense with the holding of a disciplinary enquiry. Whether as a matter of fact the underlying reasons on the basis of which a disciplinary enquiry was dispensed with were sufficient or otherwise would be a matter which would have to be decided on the basis of evidence at the trial of the complaint. At the present stage, it was neither proper nor appropriate for the Labour Court to interfere in the matter. Prima facie, the nature of the allegations contained in the order of dismissal dated 30th May, 2003 will reveal that there was a serious allegation of misconduct which warranted investigation in the course of the complaint of unfair labour practices. The Labour Court has accepted prima facie that an incident had in fact taken

place. The rationale on the basis of which the Labour Court has interfered at the interim stage is clearly unsustainable. Counsel appearing for the First Respondent submitted that in the complaint which was made to the police on 26th May, 2003 by the management which had apprehended the disruption of the function, the name of the First Respondent was not specifically referred to. That cannot, however, conclude the issue of interim relief, firstly because the more serious of the instances is alleged to have taken place on 28th May, 2003. That apart, the question as to what if any role was ascribed to the First Respondent cannot be decided merely on the basis of the affidavits at the interlocutory stage. This is a matter which must await a final decision on the basis of the evidence which emerges at the hearing of the complaint.

6. The Industrial Court has noted in the course of its order that it was exercising a revisional jurisdiction. The parameters for the exercise of such jurisdiction are now well settled. But the restraint which is expected to be observed in the exercise of the revisional jurisdiction does not warrant an assumption by the Industrial Court that the jurisdiction should not be exercised at all,

notwithstanding whether the Labour Court which was subject to the superintendence of the Industrial Court in the revisional jurisdiction has overstepped the limits of its authority. In an appropriate case, the Industrial Court is in the interests of justice bound to take recourse to its revisional powers where the Labour Court has overstepped the limits of its jurisdiction or has passed orders which have manifestly resulted in a miscarriage of justice. The impugned order of the Industrial Court ex facie shows that there was no independent application of mind by the Industrial Court at all. For all these reasons I am of the view that the order passed by the Labour Court granting interim relief was unsustainable and that the order of the Industrial Court affirming that order is manifestly erroneous.

7. The Petition therefore has to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (a). However, it is clarified that all the observations contained in the present order are confined to the disposal of the question as to whether a case for the grant of interim relief was made out. These observations shall not come in the way of a final disposal of the complaint on merits.

8. Mr. Bapat, learned counsel appearing for the First Respondent states that the First Respondent would make an application before the Labour Court for the payment of subsistence allowance. Since no such application is on the record either of the Labour Court or of this Court as of date, no opinion is expressed by this Court either on the tenability or the merits of such application.

Stay refused.